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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/078,614	02/19/2002	Ralph L. Bass	1136/9	5599
7590	06/16/2004		EXAMINER	
Jennifer L. Skord 133 Country Lane Pittsboro, NC 27312			YU, GINA C	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/078,614	BASS, RALPH L.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gina C. Yu	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 01 March 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-15 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-15 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

Receipt is acknowledged of appeal brief filed on March 1, 2004. The finality of the Office action dated November 4, 2003 is hereby withdrawn in view of further consideration. New rejections are made.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-12, 14, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Taylor et al. (US 5869104) ("Taylor").

Taylor discloses a method of treating skin conditions by gliding on the affected skin a salt block comprising substantially pure salts of sodium chloride. See col. 1, line 50 – col. 2, line 4; col. 4, lines 7 – 33 and col. 4, lines 58 – 61. See instant claims 7-12. The salt block used in the invention, which comprises 95 –100 % by weight of NaCl with only trace amounts of other mineral salts such as magnesium or calcium is described in col. 3, lines 5- 62. See instant claims 2-6.

While the reference does not expressly teach "cellulite-affected" skin, examiner notes that the instant claims are not limited to treating patients who are in need of the treatment. In response to applicants' argument that Taylor is directed to "infectious skin condition", examiner asserts that the claimed method is inherently practiced by the prior art method of applying the salt block to skin affected by any of the skin condition

disclosed in the reference and cellulite, as explained above. There is no condition or limitation as to the population of the users. The Taylor method of gently gliding the affected skin with the same salt block will inherently treat cellulite present in the affected skin.

While the Taylor reference fails to mention the additional components recited in claims 14 and 15, examiner asserts that traces of potassium ions are inherently present in the Taylor salt composition. See Aldrich (1996, p. 1328 and 1228, teaching 99% pure sodium chloride and potassium chloride contain traces of phosphate ions).

While applicants assert in brief that Aldrich fails to teach whether phosphate ions are naturally present in human intra- and extracellular fluid, the present claims merely recite components present in extracellular fluid or intracellular fluid. Regardless of whether Aldrich teaches such information, the fact that the NaCl in the Taylor salt block contains the trace amount of potassium ions does not change. Instant claims are not directed to the discovery of potassium ions in human in the instant claims. The claimed invention is a method of using a composition that inherently contains the potassium ions.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor, as applied to claims 1-12, 14, and 15 above, and further in view of Friedrichs (DE 29616496) and Koike et al. (US 6461623 B2) ("Koike").

Taylor fails to teach potassium chloride in the salt block composition.

Friedrichs teaches method of treating cellulite by topically applying a composition comprising about 55-65 % of sea salt, which is viewed as sodium chloride. See English translation, USPTO 2003-2637, p. 2, Claim of Protection. The reference teaches that the treatment has lymph-flow stimulating effect. See p. 1.

Koike teaches a massaging composition. The reference teaches to add 0.1-30 % by weight of sodium chloride and/or potassium chloride for scrubbing effect and skin contracting (firming) effect. See col. 4, lines 23 - 36.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have been motivated to use the Taylor method to treat cellulite as motivated by Friedrichs, because 1) Friedrichs teaches that it is well known to treat cellulite by massaging the skin with a highly concentrated salt composition; 2) the application of either of the Taylor salt block composition to pre-moistened skin and the Friedrich sea salt in an emulsion would effectively result in coating the skin with a highly concentrated NaCl composition; 3) Taylor method of manipulating the skin (col. 4, lines 7 – 13) is viewed similar or equivalent to massaging and stimulating the skin. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the solid salt block in Taylor by adding potassium chloride as

motivated by Koike because of the expectation of successfully producing a massaging composition which provides skin firming effect.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection in part and not persuasive in part.

Applicant' opinions on the New York Daily reference are moot in view of the new grounds of rejection.

In response to applicants' assertion that Friederichs invention is to literally "peel off" cellulite, examiner notes that the claimed method of "gliding" the salt block on skin is taught by Taylor. Examiner also views that one of ordinary skill in the art would know that the Friederichs reference does not literally mean that cellulite, the appearance of dimpling on the skin caused by the accumulated adipocytes, will be somehow literally detached from the skin. See applicant's specification, p. 1-2.

The factual inquiries set forth in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966) requires that the determination of obviousness under 35 U.S.C. § 103(a) are be made from the perspective of one or ordinary skill in the pertinent art. In this case, examiner views that one of ordinary skill in cellulite treatment art would agree with applicant's interpretation of Friederichs and the combined teachings of Taylor and Friederichs. What would have been obvious to the skilled artisan is that there is nothing in the Friederichs teaching that the disclosed method would actually cause the physical detachment of the skin with the "honeycomb appearance caused by fat tissue". A reasonable interpretation of the prior art would be that the invention reduces the signs

of cellulite. Applicants' assertion that the Friederichs composition also leaves "unsightliness of the peeling" lacks factual support.

Examiner also views that one of ordinary skill in cellulite treatment art would not merely conclude that the teachings of the references as "using a NaCl block composition for topical treatment of infections, so that so that the massage with the topical infection treatment causes peeling of the cellulite affected skin", as applicant describe. Rather, the issue in this case is, whether, given the teaching of treating cellulite with sea salt (NaCl) composition as in Friederichs, it would have been obvious to one of ordinary skill in the art to have used the Taylor salt block (NaCl) to treat the same condition. Examiner sees no patentable distinction in the Friederichs method of massaging the skin with a sea salt emulsion from the present invention. The Friederichs composition contains salt in an emulsion carrier. Applicant discloses that the skin area to be treated is pre-moistened with water. See instant claim 11. Contacting the pre-moistened skin with the Taylor salt block would obviously make the skin coated with the aqueous salt composition, which would effectively induce the same result as the Friederichs method. While applicants describes the prior art as a literal peeling method of cellulite, examiner views that it is unreasonable for a skilled artisan in dermatological art to treat a patient to cause any abrasion or debridement on the skin affected with cellulite, because, as applicant define in specification, cellulite is not a condition which the accumulated adipocytes can be externally removed. Applicant claims various massaging motions as recited in instant claim 7. The prior art clearly teaches that the cellulite is treated by stimulating lymph flow. It is obvious that

applicants' claimed method of rubbing the skin with the NaCl salt composition with the various massaging motions as recited in the instant claim 7 would reduce the similar effect.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Regarding the rejection made in view of Taylor and Friederichs, Applicants' assertion that Taylor is limited to treating skin infection is not persuasive. Friederichs teaches that it is notoriously well known to treat cellulite by massaging skin with a salt composition. Taylor teaches the salt composition applicant is using in the instant invention. In view of the collective teachings of the references, using the Taylor salt block to treat cellulite is plainly obvious to one of ordinary skill in the art. The rejection is proper since the motivation is based on the objective teachings of the references.

Regarding the teachings of Koike, applicant describes NaCl and KCl as mere optional components. However, the reference expressly teaches to add these components as ingredient (D). The specific function of these salts as used in massage compositions and the preferred particle sizes and amounts of the salts are particularly taught. The reference in fact teaches that NaCl and KCl are "especially preferred". See

col. 4, lines 23 - 36. The reference teaches that these salts induce "scrubbing effect" or skin contracting effect, which means skin-firming effect and therefore is desirable for cellulite treatment. See Znaiden et al. (US 5536499), col. 3, lines 9 - 11. The rejection is made particularly based on the skin firming effect of massaging the skin with salt. The issue here is whether, given the teaching in Friederichs that cellulite is treated with sea salt (NaCl), the skilled artisan would have been motivated to add KCl to the Taylor salt block (NaCl) because of the expectation to make a cellulite treatment composition with the skin-firming effect.

***Conclusion***

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-0635. The examiner can normally be reached on Monday through Friday, from 8:30 AM until 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gina Yu  
Patent Examiner



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SUPERVISORY PATENT EXAMINER